

REMARKS

This Amendment is submitted simultaneously with filing of the Request for Continuing Examination.

The last Office Action has been carefully considered.

It is noted that claims 1-8 and 10-12 are rejected under 35 U.S.C. 102(b) as being unpatentable under Stephen B. Wicker (Error Control Systems – ISBN 0132008092).

After carefully considering the Examiner's grounds for the rejection of the claims over the art, applicant amended claims 1, 6, and 7 to more clearly define the present invention and to distinguish it from the prior art.

In the Examiner's opinion basically different fire codes can be described by variation of a mathematical expression corresponding to the value C. The Examiner also stated that a device which can perform this variation can not be considered as new from the publication. Moreover, in

his opinion the patent to Wicker discloses the use of such codes in connection with variable-length codes.

The patent to Guha is applied by the Examiner to show that the value C can be changed to obtain a code with a variable redundancy and to adapt the error correction and detection properties of the code to the canal quality.

This document deals extensively with an adaptive forward error correction (FEC) and mentions also a fire code. In accordance with the disclosure of this reference, FEC is used when the condition is fulfilled that the transmission rate to be expected despite higher redundancy is greater than one distorted by a transmission error.

In connection with the Examiner's rejection it should be mentioned that the present invention deals with an apparatus for and a method of producing a variable redundancy code, or in other words data can be coded by an apparatus with different redundancy (error tolerance). Variable-length-codes are to the contrary the coding in which frequently occurring signals are coded by short code words (for example bit sequences), and rarely occurring symbols are coded by longer code words

(for example Huffman) coding. The patent to Wicker suggest the use of fire code, and not the use of variable redundancy code.

In the Examiner's opinion an apparatus which is described by the properties and suitable for the fire codes can not constitute a patentable invention "for example by variation of C different fire codes are described", "different codes have different redundancies", "the redundancy has influence on error correction and error detection of the code".

The apparatus of the present invention as defined now in the amended claim 1, in an addition to the original features, is designed so that it implements a plurality of different fire codes, and the different fire codes are selected from the coding of input data in dependence on a control value, to produce a code with variable redundancy as disclosed for example on pages 3 and 4 of the specification. From the quantity of all fire codes, in accordance with the present invention a predetermined selectable generator polynomial  $G(x)$  is realized. It should be noted that for example the advantages circuit structure shown in Figure 1 can be realized only for fire codes with  $C > m$ , wherein  $m$  is the degree of the polynomial  $P(x)$ .

The patent to Wicker does not have any hint or suggestion to select from the quantity of all fire codes one group and to realize it within an apparatus.

The patent to Guha mentions that a fire code can be set as FEC. However, it does not suggest to implement a plurality of different fire codes and, depending on the situation, to select one or another for coding of the input data.

As explained herein above the present invention as defined now in the amended claims contains the features which are not disclosed in the references. In order to arrive at the applicant's invention from the references, the references have to be fundamentally modified by including into them the features which were first proposed by the applicants. However, it is known that in order to arrive at a claimed invention, by modifying the references the cited art must itself contain a suggestion for such a modification.

This principle has also been consistently upheld by the U.S. Court of Customs and Patent Appeals which, for example, held in its decision in re Randol and Redford (165 USPQ 586) that

Prior patents are references only for what they clearly disclose or suggestion; it is not a proper use of a patent as a reference to modify its structure to one which prior art references do not suggest.

Definitely, the references do not contain any hint or suggestion for such modifications.

As for the combination of the references, since none of the references teaches the new features of the present invention as now defined in the amended claims, therefore any combination of the references would lead only to such a construction and such a method which would also not include the new features of the present invention as defined in the amended claims.

The Examiner's attention is respectfully directed to the decision in re Fritch, 23 USPQ 2d 1780, 1783-84 (Fed. Cir 1992) in which it was stated:

"Obviousness can not be established by combining the teachings of the prior art to produce the claimed invention, absence some teaching or suggestions supporting the combination."

Definitely, there is no support in the references for their combination.

Therefore, the Examiner's rejection of the claims over the combination of the references should be considered as no longer tenable and should be withdrawn.

In view of the above presented remarks and amendments, it is believed that the amended claims currently on file should be considered as patentably distinguishing over the art and should be allowed.

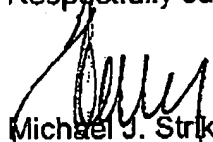
As for the dependent claims, these claims depend on the independent claims, they share its presumably allowable features, and therefore they should be allowed as well.

Reconsideration and allowance of present application is most respectfully requested.


Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be

helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-549-4700).

Respectfully submitted,



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by   
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